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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

DELAWARE RIVER PORT AUTHORITY, CITY OF PHILADELPHIA, CHAMBER OF COMMERCE OF GREATER PHILADELPHIA, *Appellants,*

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., *Appellees.*

On Appeal From the United States District Court for the District of Maryland

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

In compliance with Rule 13 of the Rules of the Supreme Court of the United States appellants, Delaware River Port Authority, City of Philadelphia and Chamber of Commerce of Greater Philadelphia submit herewith their statement disclosing the basis on which the Supreme Court of the United

States has jurisdiction on appeal to review the final decree of the District Court entered in this cause on May 22, 1957. Notices of appeal were filed in the District Court July 19, 1957. A substantial question is presented by these appeals.

OPINION BELOW

The opinion of the United States District Court for the District of Maryland is reported at 151 Fed. Supp. 258. A copy is attached hereto as Appendix A. A copy of the Decree of the District Court entered May 22, 1957 is attached as Appendix B. The opinions of the Interstate Commerce Commission are reported as *Iron Ore from Eastern Ports to C.F.A. Points*, 291 I.C.C. 527 and 299 I.C.C. 195.

JURISDICTION

These actions were brought under 28 U.S.C. § 1336, to set aside, in part, an order of the Interstate Commerce Commission. The judgment of the District Court was entered on May 22, 1957. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 United States Code, Sections 1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal: *Virginian Ry. Co.* v. *United States*, 272 U.S. 658; *Rochester Tel. Corp.* v. *United States*, 307 U.S. 125; *Alabama Great Southern R. Co.* v. *United States*, 340 U.S. 216.

QUESTIONS PRESENTED

1. Whether the court erred in holding that the order of the Interstate Commerce Commission insofar as it approves the tariff schedules of the Pennsylvania Railroad on iron ore from Philadelphia to Central terri-

tory, is not supported by essential basic findings and in remanding the proceeding to the Commission to make more explicit findings and for further proceedings consistent with the opinion of the court.

2. Whether the court erred in interpreting and in applying to the evidence of this case the provisions of the National Transportation Policy (49 U.S.C. preceding §§ 1, 301, 901, 1001) and of Sections 1(5), 3(1) and 15a(2) of the Interstate Commerce Act (49 U.S.C. §§ 1(5), 3(1) and 15a(2)).

3. Whether the court erred in failing to adhere to the doctrines of primary jurisdiction and administrative finality by remanding to the Interstate Commerce Commission its order aforesaid for further proceedings consistent with the court's opinion, thereby exceeding its authority and usurping the administrative function delegated to the Commission by the Congress.

STATUTES INVOLVED

The National Transportation Policy and Sections 1(5), 3(1), 14(1), 15(1), 15(7) and 15a(2) of the Interstate Commerce Act, as amended, are set forth in Appendix C hereto.

STATEMENT

By unanimous action the Interstate Commerce Commission in its decision and order of October 1, 1956, aforesaid, found, in part, just, reasonable and otherwise lawful tariff schedules wherein the Pennsylvania Railroad Company, effective February 9, 1953, published freight rates on import iron ore from Philadelphia, Pa., to certain points in Central territory west of Pittsburgh, Pa., on the same level as rates already maintained on the traffic from Baltimore, Md.

Previously, in its order of February 5, 1954, Division 2 of the Commission had made a similar finding, reported at 291 I.C.C. 527. For at least fifty years past, rates on import iron ore to the Pittsburgh district had been the same from Philadelphia as from Baltimore.

The Commission also held in its decision and order of October 1, 1956, with four dissents, that rates on import iron ore from New York, N. Y., to certain destinations in Central territory, published on the Baltimore basis, were just, reasonable and lawful but that rates from Boston, Mass., on the same basis had not been shown to be just, reasonable, and lawful. The Commission held further that certain later retaliatory efforts by the railroads serving Baltimore and Philadelphia to reduce their rates on iron ore from those ports to the interior were not shown to be just and reasonable. In essence, therefore, the order of the Commission approved as reasonable rates on import iron ore from Philadelphia and New York the same as those applicable from Baltimore, but disapproved rates on the same basis from Boston.

The court below, in its decree entered May 22, 1957, vacated the Commission's order of October 1, 1956, insofar as it approved the tariff schedule on iron ore from New York, and ordered the Commission to require the railroads serving New York to cancel the rates at issue. The court below also held that the order of the Commission insofar as it approved the tariff schedules of the Pennsylvania Railroad from Philadelphia, effective February 9, 1953 is not supported by essential basic findings, and remanded the case to the Commission to make explicit findings, (a) as to the relative costs of ocean shipping of imported iron ore to the

ports of Baltimore and Philadelphia, and (b) as to the traffic therein to be reasonably expected at those ports, if parity is continued or if the differential is restored, taking into consideration the volume of traffic that has passed through those ports since February 19, 1954, when parity went into effect. These appellants have appealed only from that portion of the court's decree which remands to the Commission its order approving rates from Philadelphia the same as those from Baltimore.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

1. The District court, contrary to the well settled law on the point, has failed to adhere to the doctrines of primary jurisdiction and administrative finality in remanding the proceeding to the Interstate Commerce Commission. It has sought to substitute its judgment for that of the Commission, and to consider the wisdom and expediency of the Commission's decision and whether, on like evidence, it would have made a similar ruling. This is contrary to the doctrine of *Interstate Com. Com.* v. *Union P. R. Co.*, 222 U.S. 541, 547. The court has proceeded upon the assumption that the difference in rail distances to the considered destinations, Philadelphia versus Baltimore, was the basic reason for the pre-existing differential in the rates on iron ore. That is contrary to the evidence before the Commission. Throughout its opinion the court has criticized the Commission for its alleged departure from prior "norms" in approving parity rates from Philadelphia. Even if prior norms had been departed from by the Commission, which is denied, that fact does not warrant reversal or remand by the court. As stated in *Virginian Ry. Co.* v. *United States*, 272 U.S. 658, at 665-66:

"This court has no concern with * * * the alleged inconsistency (by the Interstate Commerce Commission) with findings made in other proceedings before it." The entire Commission, after considering at length all of the evidence, found that the establishment and maintenance of rates on import iron ore from Philadelphia to interior points on the Baltimore basis is in accordance with the provisions of the Interstate Commerce Act. The District court has, as will be shown hereinafter, misapplied and misinterpreted the evidence before the Commission, and has remanded the case to the Commission based upon its own construction of the evidence and upon its own interpretation of prior Commission decisions. Clearly the court has exceeded its lawful functions.

2. The District court has erred in its application and interpretation of the provisions of the Interstate Commerce Act and of the National Transportation Policy.

Although a specific finding was not made, it is clear that in the court's opinion the maintenance by the Pennsylvania Railroad of rates on import iron ore from Philadelphia to interior destinations the same as rates applicable from Baltimore constitutes undue preference of Philadelphia and undue prejudice to Baltimore, contrary to the provisions of Section 3(1) of the Interstate Commerce Act. In view of the findings of the Commission, among others, that by short tariff routes the railroad distance from Philadelphia to Youngstown, Ohio, a representative destination point, is but 47 miles greater than from Baltimore, and that by the actual routes of movement of the Pennsylvania Railroad from both ports, but 11 miles greater, manifestly the maintenance of rates from Philadelphia

on the Baltimore basis does not, as the Commission specifically found (291 I.C.C. 527, 554), constitute undue preference of the Port of Philadelphia or undue prejudice to the Port of Baltimore. To the contrary, the *failure* of the Pennsylvania Railroad to maintain parity rates from those ports could well be held in the circumstances to violate Section 3(1) of the Interstate Commerce Act.

Moreover, the court has erred in failing to accept or give weight to the Commission's finding that the iron ore rate from Philadelphia at issue is just and reasonable, under Section 1(5) of the Act. The Commission's finding in that regard was based, in part, upon the widely accepted criteria of comparisons with other rates on similar traffic, and comparisons with the earnings derived from similar movements of traffic. The court states in its opinion that the Commission has given no consideration to the cost or value of the services of the railroads competing for traffic at Philadelphia and Baltimore. Although no specific findings were made, or indeed were required, with respect to the relative costs of the services from Philadelphia and Baltimore, it is incorrect to state that no consideration was given to the relative cost factor. Moreover, the Commission's finding that the difference in rail distance to the destination points, from Philadelphia as opposed to Baltimore, is of small degree in and of itself constitutes a finding regarding relative costs of operation and relative values of service from the respective ports.

Of the greatest importance is the failure of the District Court correctly to apply, interpret and weigh the National Transportation Policy in con-

nection with the issues presented. That policy by its terms has as its purpose the administration by the Commission of the Interstate Commerce Act to the end of developing and preserving a national transportation system adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. Division 2 of the Commission found in its decision of February 5, 1954, (a) that iron ore is and will be an important factor in national defense; (b) that especially in case of national emergency it is highly desirable that the needs of the steel industry be not jeopardized by forced reliance upon one port, which could be incapacitated through congestion or other cause; (c) that "in the interest of national defense, Philadelphia and Baltimore (should) be placed on a rate parity on imported iron ore * * *." (291 I.C.C. 527, 554) The finding that the National Transportation Policy requires a parity of iron ore rates, Philadelphia with Baltimore, was affirmed by the entire Commission in its decision of October 1, 1956 (299 I.C.C. 195, 209). The Court does not state, or infer, that the National Transportation Policy and the national defense do not require the availability of two Atlantic ports as gateways for the importation of iron ore. Rather it appears to consider that other factors, such as the effect of Philadelphia rate parity on the Port of Baltimore and the railroads serving it, are more important considerations. In failing to consider the mandate of Congress contained in the National Transportation Policy, and in refusing to accept the Commission's findng that a parity of import iron ore rates, Philadelphia with Baltimore, is in accordance with that policy, the court has

seriously erred. *Luckenbach S. S. Co.* v. *United States,* 122 F. Supp. 824, aff. 347 U.S. 984.

3. The Commission, with ample support in the record before it, found that with rate parity, Philadelphia with Baltimore, import iron ore would move through both ports, and that in fact the tonnage through Baltimore would probably continue to increase at parity rates. That finding was based in part upon actual tonnage statistics in the period from the date of the effectuation of the parity, in February, 1954, through November of that year. In the first eleven months of 1954 the iron ore tonnage through Baltimore to the considered destinations west of Pittsburgh had increased to 1,070,457 gross tons, from 807,875 gross tons in the same period of 1953. To the Pittsburgh district, 501,799 gross tons of iron ore were imported through Baltimore in the 1954 period, against 314,757 gross tons in the equivalent period in 1953.

The final hearing in the proceeding before the Commission was concluded in December, 1954. The statistics indicating movements of import iron ore through Philadelphia and Baltimore relied upon in the final decision of the Commission were as current as it was possible and feasible to obtain. The court has remanded the case for findings regarding traffic movements since the close of the record before the Commission to the present time. There is nothing to indicate that such statistics, if produced, would alter the basic picture reflected by the statistics already of record and relied upon by the Commission. Even if that were not so, however, it is submitted that the court has exceeded its authority and acted arbitrarily in this regard. Clearly, records before administrative agencies must at some point be closed and may not be indefi-

nitely held open. If proceedings were remanded in every instance in which a district court considered the record not sufficiently current, there would manifestly be no end to litigation before administrative agencies.

4. The Commission found, based upon the entire record before it, that at parity rates on import iron ore Philadelphia and Baltimore would share the traffic; that without parity rates Philadelphia will not participate in the traffic. The court apparently disagrees with these conclusions, in large part because of its belief that ocean costs of moving ore from Labrador to Philadelphia will be lower than the cost of transporting ore from Labrador to Baltimore. It criticizes the Commission for failure to make more specific findings in that regard.

The court's position in this connection is based upon the unsupported premise that only Labrador ore is involved in this proceeding. Such is not the case, as the Commission's findings show. Moreover, it apparently is the court's view that with respect to Labrador ore the differences in ocean distances, Philadelphia versus Baltimore, will result in the exclusive use of the Port of Philadelphia at parity rail rates. That conclusion has no sound basis in the record before the Commission and although urged upon the Commission was not adopted. The court has erred in substituting its appraisal of the facts for that of the Commission and in remanding the case to the Commission for findings in the premises.

5. The court, contrary to the doctrine of *Alabama Great Southern R. Co.* v. *United States*, 340 U.S. 216, has insisted upon a specificity of findings by the Commission that is not required by the governing statutes. The Commission has clearly stated the basic findings

essential to support its ultimate conclusions and order and "the report, read as a whole, sufficiently expresses the conclusion of the Commission, based upon supporting data * * *." *United States* v. *State of Louisiana*, 290 U.S. 70, 80.

CONCLUSION

For the reasons stated, it is submitted that the questions presented by these appeals are substantial, and it is urged that jurisdiction be noted and that the Decree of the court below be reversed in respect to the issues and questions raised by these appeals.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CIVIL ACTION NO. 9237

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,
Plaintiffs,

v.

THE UNITED STATES OF AMERICA, ET AL.,
Defendants.

SOPER, Circuit Judge:

This suit was brought by the Baltimore and Ohio Railroad Company, Western Maryland Railway Company, Canton Railroad Company and certain civic authorities and commercial organizations of Baltimore, Maryland, to set aside decisions and orders of the Interstate Commerce Commission which prescribed parity of railroad rates on imported iron ore from the ports of Baltimore, Philadelphia and New York to seventeen destinations in the eastern portion of the so-called differential or Central Freight Association territory. This area lies west of a line from Buffalo, New York to Pittsburgh, Pennsylvania and includes Youngstown, Ohio on the north, Wheeling, West Virginia on the south and other intervening steel-producing points in western Pennsylvania, eastern Ohio and northern West Virginia.[1] The defendants, in addition to the United States

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[1] Differential territory is defined in *Baltimore Chamber of Commerce* v. *Ann Arbor R. Co.*, 159 I.C.C. 691, 692. The seventeen points, all consuming or storage centers for iron ore, are Midland, Farrell, Sharon and Sharpsville, Pa.; Martins Ferry, Mingo Jct., Steubenville, Lowelville, Niles, Struthers, Warren, and Youngstown, Ohio; Benwood, E. Steubenville, Follansbee, Weirton and Wheeling, W. Va.

and the Interstate Commerce Commission, include as original or intervening defendants the Pennsylvania Railroad Company which serves the port of Baltimore as well as the ports of Philadelphia and New York, the New York Central Railroad Company and the Erie Railroad Company which serve the port of New York, the Port of New York Authority, the New York, New Haven and Hartford Railroad Company and the Boston and Maine Railroad Company which serve the Port of Boston, the Port of Boston Commission and divers producers and fabricators of steel in the differential territory.

The decisions of the Commission which are challenged in this proceeding mark the departure from a long established practice which has kept the rates applicable to both import and export traffic to and from differential territory lower as to Baltimore than the other Atlantic ports. The differentials were first established in 1877 by agreement of the carriers serving the territory in order to avoid misunderstandings in respect to the geographical advantages of Baltimore, Philadelphia and New York, as affected by rail-and-ocean transportation, so as to equalize the aggregate cost of transportation between competing points in the west and the domestic and foreign ports reached through those cities. The differentials were arbitrary in a measure since they reflected only in part the lesser distances to Baltimore and Philadelphia as compared with the distances to New York and Boston, but they were established by compromise as the only means of averting rate wars.[2] The differentials applied to all traffic eastbound and westbound, domestic and export-import, between Central territory and the north Atlantic ports. The differential on eastbound export traffic from the differential territory was 60 cents per ton less to Baltimore and 40 cents per ton less to Philadelphia than the corresponding rates to New York. On westbound import traffic the same differential applied to third

[2] See *Maritime Asso., Boston Chamber of Commerce* v. *A.A. R.R. Co.*, 95 I.C.C. 539, 567; 126 I.C.C. 199.

or fourth class and special commodity rates. Rates to Boston were not to be less than those to New York on domestic or foreign freight. In 1880 an attempt was made to modify the agreement on the ground that changes had substantially equalized ocean freights but after arbitration by the Thurman Advisory Commission the differentials established in 1877 were reaffirmed.

While this arrangement originated in a voluntary agreement of the carriers it has been considered by the Commission from time to time during the past 60 years when it was brought to the Commission's attention by commercial interests in Boston, New York, Philadelphia and Baltimore, and in each instance has been found lawful.[3]

Prior to 1930 the differential was applicable to both domestic and import-export traffic. In that year the Commission removed all domestic class rates from the scope of the differential rate structure and prescribed new scales of class rates from the several ports, based primarily on distance.[4] Under this new arrangement the longer distances from the three other ports resulted in a differential on domestic traffic to and from Baltimore, which exceeded the long established differential in its favor on import and

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[3] For a resume of the history of the differential, see *In the Matter of Differential Rates*, 11 I.C.C. 13 (1905); *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co.*, 219 I.C.C. 151 (1936). It was also considered under varying circumstances in *New York Produce Exchange* v. *Baltimore & O. R. Co.*, 7 I.C.C. 612 (1898); *In the Matter of Relative Rates upon Export and Domestic Traffic in Grain and Grain Products*, 8 I.C.C. 214 (1899); *Chamber of Commerce of N.Y.* v. *N.Y.C. & H.R. R.R. Co.*, 214 I.C.C. 155 (1912); *In the Matter of Import Rates*, 24 I.C.C. 78 (1912); *Baltimore Chamber of Commerce* v. *Ann Arbor R. Co.*, 159 I.C.C. 691 (1929); *Lighterage Cases*, 203 I.C.C. 481 (1934); *City of Philadelphia* v. *Baltimore & O. R. Co.*, 231 I.C.C. 21 (1938); *State of New Jersey* v. *Baltimore & O. R. Co.*, 24 I.C.C. 581 (1941); *Port of New York Authority* v. *Baltimore & O. R. Co.*, 248 I.C.C. 165 (1941); *Ex Parte Grain from Buffalo to NY.*, 278 I.C.C. 31 (1950).

[4] *Eastern Case Rates Investigation*, 164 I.C.C. 314.

export traffic. The domestic first-class rates to Youngstown from Baltimore were fixed at $2.01 per hundred pounds, from Philadelphia $2.16 per hundred pounds, from New York $2.31 per hundred pounds, and from Boston $2.70 per hundred pounds. Since these rates did not cover import and export traffic the railroads in 1932 published new import and export class rates. These were made the same as the new domestic rates so far as Baltimore was concerned and the standard differentials in favor of Baltimore of 20 cents a ton with respect to Philadelphia and 60 cents a ton with respect to New York and Boston were preserved. The import-export class rates from the three cities last mentioned thus became generally lower than their domestic rates.

For some reason that is not explained, the rates on iron ore from Philadelphia to Pittsburgh have been the same as those from Baltimore to Pittsburgh since 1903. This parity, however, prior to the present controversy, has been only a paper equalization since there has been practically no movement from Philadelphia to Pittsburgh and no attempt has been made by the Baltimore railroads to set up a differential on this traffic.[5]

In 1949, in response to complaints from steel producers in the interior calling attention to the increased volume of movement and other changed conditions, the carriers undertook a study of the rate structure and as a result the Baltimore and Ohio, the Western Maryland, the Pennsylvania and connecting lines established, as of October 9, 1950, reduced rates on iron ore from Baltimore to Pittsburgh and also to steel mills in differential territory to the west. The Pennsylvania made a like reduction on iron ore

[5] In the seven years from 1946 to 1952 inclusive, 2,160,000 gross tons moved from Baltimore to the steel mills in Pittsburgh, and 652,500 tons from Baltimore to Johnstown. No tonnage moved from Philadelphia to Pittsburgh and only 8333 tons, comprising one cargo, to Johnstown. During the six years from 1946 to 1953 inclusive, approximately 647,000 tons moved from Baltimore to the steel mills in the Youngstown area and none from Philadelphia.

from Philadelphia to Johnstown and Pittsburgh. The new rates retained the regular port differential to destinations in differential territory and parity between Baltimore and Philadelphia on traffic moving to Johnstown and Pittsburgh. No action was taken at this time to establish revised rates on iron ore moving from ports other than Baltimore to differential territory, but the record of the conference of railroads shows that "it was understood the usual port differentials should be observed from the other north Atlantic ports."

In August 1951, the Pennsylvania, anticipating an increase in the volume of imported iron ore and conscious that it could not expect to share in the transportation of the commodity from Philadelphia to the interior without adequate unloading facilities at this port, announced that it would erect a modern unloading facility at Greenwich in South Philadelphia designed to cost not less than $10,000,000. It proceeded to erect such facility and had spent the greater part of this sum before publishing reduced rates on iron ore, effective February 9, 1953, to which reference will now be made. Unloading facilities were installed in Baltimore by the Canton Railroad in 1917.

It was against this background that the Interstate Commerce Commission, in the decisions now under review, gave its approval to parity of rates on iron ore moving from New York, Philadelphia and Baltimore to Central territory, but denied parity to Boston. The case grew out of the publication by the Pennsylvania of reduced rates on iron ore, effective February 9, 1953, from Philadelphia to the seventeen points in differential territory, and the simultaneous publication of like rates by the New York Central from the ports of New York and Boston, and by the Erie Railroad from New York to destinations in the Youngstown area on their lines. The effect of these publications was to reduce the rates on iron ore from Philadelphia, New York and Boston to Youngstown to $2.71 per

gross ton, the same rate which applied to Baltimore.[6] In order to meet this reduction and to preserve at least in part the historic differential, the Baltimore and Ohio and the Western Maryland then published, to be effective February 16, 1953, a reduced rate of $2.51 per ton on iron ore from Baltimore to those of the seventeen points on their lines, thus restoring a 20-cent differential in favor of Baltimore as compared with the other three ports. No attempt was made by the Baltimore railroads to restore the standard differential of 60 cents over New York and Boston.

The Baltimore and Ohio and the Western Maryland also published a reduction of 20 cents per ton, effective February 16, 1953, to Pittsburgh, Johnstown, Donora and Monessen in order to establish a differential on shipments of ore to Pittsburgh in accordance with the general port differential structure and to preserve a proper rate relationship between Pittsburgh and the other named cities. The Pennsylvania countered with a rate reduction of 20 cents per ton, effective February 16, 1953, from Philadelphia and Baltimore to the four named cities, and a further reduction of 20 cents in its rates from Philadelphia and Baltimore to the seventeen points in differential territory, effective March 11, 1953.

The Baltimore and Ohio, the Western Maryland and divers Baltimore interests protested the rate reductions by the other railroads and all of the above-mentioned reductions were suspended by the Commission pending an investigation instituted on February 6, 1953. This was followed by a hearing and oral argument, and an order of Division 2 of the Commission on February 5, 1954, which approved the reduction originally published by the Pennsylvania, effective February 9, 1953, giving Philadelphia a parity with Baltimore, but cancelled the tariffs of the New York Central and the Erie equalizing rates from New York and Boston with Baltimore. Division 2 also

[6] The rates are stated without the general increase approved in Ex-Parte No. 175.

found that the February 16, 1953 tariffs of the Baltimore and Ohio and the Western Maryland, and the March 11, 1953 tariffs of the Pennsylvania were not just and reasonable and ordered them to be cancelled. The Pennsylvania then published a supplementary tariff making the equalization of rates effective February 19, 1954, whereupon the Baltimore interests filed suit in this court asking a restraining order pending reconsideration by the entire Commission. The court refused to issue the order on the ground that the administrative process had not been completed, with the result that parity rates from Philadelphia went into effect and have since prevailed. The full Commission, on July 30, 1954, stayed its order cancelling the rates from Baltimore, New York and Boston and reopened the proceeding. Finally, on October 1, 1956, the Commission rendered its decision, finding that the February 9, 1953 rates from Philadelphia and New York were justified but that the February 16, 1950 rates from Baltimore, the March 11, 1950 rates from Philadelphia, and the February 9, 1953 rates from Boston were not justified and ordered them cancelled. In this proceeding we are concerned with the propriety of the Commission's action as to the rates from Baltimore, Philadelphia and New York.[7]

The modification of rates on iron ore by the railroads which serve the Atlantic ports in competition with Baltimore was brought about by important changes in business conditions involving an increased demand for steel and an increase in the importations of iron ore which theretofore had contributed little to the total volume of commodities transported by the railroads from the coast to the interior. The origins of the ore that has been and will be imported through the Atlantic ports have an important bearing on the controversy. No figures are available for the years 1955, 1956 or 1957 since the record before the Commission was closed on December 21, 1954, and the case is submitted

[7] By a subsequent decision filed on March 19, 1957, the Commission reaffirmed its decision as to the Boston rate.

to this court on the Commission's record. An outline of the conditions prevailing prior to and after World War II and until the Commission's record was closed is set out in the following excerpt from the report of Division 2 of the Commission:

"Mines in northern Minnesota, Wisconsin, and upper Michigan have for many years been the sole or principal source of supply for the iron-ore requirements of steel mills in central and trunkline territories, the preponderance of the ore moving by rail to Lake Superior docks, thence by water to lower Lake Erie ports, and by rail beyond. Prior to the end of World War II in 1945, importation of iron ore was comparatively light and the preponderance of the ore imported was consumed in furnaces at or near the eastern seaboard. Some imported ore moved to steel mills in the Johnstown and Pittsburgh, Pa. areas but little, if any, moved to mills west thereof. A few shipments which moved to interior points were consigned to manufacturers of paint or other commodities not produced by the steel mills.

"Since the end of World War II, steel producers have developed sources of supply for iron ore in Venezuela, Chile, Liberia, Brazil, Sweden, and Cuba, and this basic raw material of the steel industry has been imported in large volume. Mines now being developed in Labrador by the Iron Ore Company of Canada will supply large quantities of iron ore for the furnaces of five steel mills in central territory which own stock in that corporation, and to other consumers. During the 6-year period from 1936 through 1941 from approximately 2,000,000 to 2,500,000 tons of iron ore were imported annually. The import movement declined drastically during World War II, reaching a minimum of 402,096 tons in 1943, most of which originated in Canada. Following the war, importation of iron ore increased from 1,189,300 tons in 1945 to 10,145,415 tons in 1951, the latter figure equivalent to over 4 times the prewar tonnage. In 1952, a strike occurred in the steel industry and approximately 9,760,300 tons of iron ore were imported during that year. It is estimated that within a few years 20,000,000 tons of iron ore will be

imported annually, a substantial portion of which will move to furnaces in central territory. While ex-lake ore will continue to move from the Lake Erie ports in large volume, it will be replaced by imported ore to a greater extent than in the past."

The full Commission, in its report of October 1, 1956, commented upon the increase in importations of iron ore into the United States in the following excerpt from its decision:

> "Iron ore imported into the United States in 1948 originated in 28 foreign countries and aggregated 6,091,677 gross tons. By 1953 the tonnage had increased to 11,074,035 gross tons. The principal exporting countries in this period were Chile, Sweden, Venezuela, Brazil, Liberia, and Peru. On and between August 26 and October 6, 1954, a total of 1,511,875 gross tons of ore were shipped from 13 foreign ports to north Atlantic ports. Of this amount, 776,851 tons (51 percent) entered the Port of Baltimore, 718,809 tons (48 percent) entered the Port of Philadelphia, and 16,215 tons (1 percent) entered the Port of Boston. There was no reported entry of ore at New York during this period. Approximately one-third of this ore originated at Seven Islands, Labrador, from which no tonnage moved prior to 1954."

Statistics furnished to the Commission show that during the years 1952, 1953 and eight months of 1954, 94% of all the ore imported through the north Atlantic ports came from Venezuela, Chile, Sweden, Peru, Brazil and Liberia, amounting to 7,229,903 tons in 1952; 8,065,922 tons in 1953 and 6,746,335 tons in 1954. Bethlehem Steel Corporation and United States Steel Corporation consumed most of the imports. Thus; in the eight months of 1954 the aggregate imports of these two corporations amounted to 77% of the total. Imports to these corporations are not delivered to the railroads but are consigned to their own facilities: at Sparrows Point for the Bethlehem Steel Corporation and Fairless (Morrisville, Pa.) for the United States Steel Corporation. The facilities at Sparrows Point have a ca-